

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: HONORABLE TERRENCE G. BERG
NEO WIRELESS, LLC PATENT No. 22-md-03034
LITIGATION,
_____ /

STATUS CONFERENCE VIA ZOOM TELECONFERENCING

Wednesday, September 13, 2023

Appearances (Continued on next page):

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Detroit, Michigan

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4:15 p.m.

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THE COURT: All right. Well, good afternoon, everyone. So I have received some information about your discovery dispute here. This is an informal hearing. I want to thank Mrs. Sheri Ward for being here as our court reporter to take this down, but I'm really just trying to get a sense of your respective positions regarding this.

And so I did receive a number of last-minute materials, such as slides, from a couple of the parties here, and I have reviewed all of those materials, but -- so I guess since it's plaintiff's case, Mr. Stewart. I'll give you the chance to start off here, and why don't you give me a thumbnail sketch of what it is you are asking for here that you are not getting. Go ahead.

MR. STEWART: And since you've said you have already reviewed the slides, I won't bother sharing them and going through that formally unless you would like me to.

In terms of a thumbnail sketch, what we are really after here is all of the different ways that defendants make money or obtain value from the use of cellular connectivity in their cars because the patents-in-suit in this case are core pieces that enable LT and 5G connections in those cars.

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1 The accused products that we accuse in our complaint and
2 our infringement contentions are the vehicles themselves that
3 defendants' sell, and the ways that defendants make money off
4 of the cellular connectivity in those cars is three fold.

5 They sell the cars themselves with this connected
6 functionality, and so there's some portion of that price that a
7 customer is paying to be able to buy that cellular ability in
8 their vehicle.

9 There is also connected services they sell that you can
10 access in that car by the cellular connection, and then there's
11 a third category, which is the ways that defendants use the
12 data that they collect from the cellular connection in the cars
13 to generate either cost savings or some other sort of revenue,
14 by selling data or monetizing it in other ways.

15 And so we have been negotiating with defendants about how
16 to get all of those potential damages inputs from defendants so
17 that we can run the numbers and work with our damages experts
18 to get to a damages case that accurately reflects the value of
19 these inventions.

20 And so the impasse we sort of initially were at that was
21 defendants just wanted to provide TCU hardware costs, which is
22 one particular component. It's a box of chips and wires that
23 goes into the car somewhere. They wanted to provide their cost
24 that they purchased that one component for and call it the end
25 of the day or call it quits. We thought that we were entitled

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1 to full vehicle-level financials about all the things that --
2 the ways that they make money on these cars, the accused
3 products.

4 **THE COURT:** Are you saying you want to find out how
5 much money they make like, shall we say, as a profit on the
6 sale of a particular car?

7 **MR. STEWART:** That's right. Initially in our initial
8 proposal --

9 **THE COURT:** Why would you be eligible to get that?
10 Don't you have to show that somehow or another this technology
11 is the driving force behind why somebody would purchase a
12 vehicle before you could get that?

13 **MR. STEWART:** Your Honor, if we were to use that
14 vehicle price as our actual royalty base at trial, if that was
15 our actual damages expert's report, was, hey, here is the
16 \$70,000 price of the car, we want a 5 percent royalty on that
17 car value, then we would have to prove what you just said, that
18 the entire market value of the vehicle was tied to our specific
19 invention.

20 We don't have to prove that, though, to use it as one of
21 the inputs that we then step down from, right? To be able to
22 assess even just the portion of that price that is attributable
23 to the connection, the cellular activity that is at issue in
24 this case, we have to start somewhere.

25 **THE COURT:** Well, why -- we have this information

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1 from Avanci or whatever that's actual licensing information.
2 Isn't that the most relevant? I mean isn't that a reasonable
3 royalty? Isn't that a lot more relevant than what you're
4 talking about?

5 **MR. STEWART:** Your Honor, honestly, that's a very
6 good point because part of the reason that we need some of
7 these additional materials that we are asking for that we
8 aren't getting is to be able to do a complete comparable
9 license evaluation.

10 Because what happens when you use a comparable license,
11 whether it's the Avanci license or other licenses that Neo has
12 entered into with other parties or licenses we get from
13 defendants, when you do a comparable license damages model,
14 what you have to do is look at the ways that the comparable
15 license evaluated the value of the technology and accommodate
16 differences between that --

17 **THE COURT:** The licenses are for this. They are for
18 the use of this technology in cars.

19 **MR. STEWART:** Your Honor, I agree with you. In some
20 circumstances they are just directly a per-unit royalty perhaps
21 for this technology in cars.

22 In other instances, though, the way that the royalty is
23 determined might not be that simple. It might be that you
24 start with --

25 For example, there are often licenses in industry-wide

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1 scenarios where the license itself starts with the total price
2 of the product and just applies a particular percentage. Maybe
3 it's a smaller percentage if the feature --

4 **THE COURT:** That makes no sense to me here. I don't
5 see that. That seems like it's really shooting for the stars
6 here.

7 **MR. STEWART:** Your Honor, if I could just add
8 one more detail, but I didn't want to interrupt you.

9 **THE COURT:** Okay.

10 **MR. STEWART:** Just to avoid getting into too much
11 confidential information on this hearing, but there are
12 licenses in this case that we are trying to evaluate. Like,
13 for example, the license related to Mercedes Benz, the
14 defendant who has been dismissed from the case, where the
15 inputs that went into determining that license were broader
16 than just the TCU cost or the cost of that particular model and
17 were different than just applying a particular numerical
18 royalty to a unit.

19 So this is in abstract, and, again, I don't want to get
20 into too many details because this isn't expert report time yet
21 and we haven't fully evaluated this, but there are licenses in
22 this case where we would need more inputs than just a plain old
23 number to evaluate damages fully.

24 And so it may be the case that when we get to expert
25 report time defendants want to rely exclusively on, for

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1 example, that Avanci model, the Avanci situation, as their
2 damages model, and that's what their damages expert thinks is
3 the most relevant or the most reliable, but at the discovery
4 phase, we need to be able to see all of the inputs and compare
5 them to other licenses that are relevant to the hypothetical
6 negotiation, other ways to assess damages that aren't even
7 necessarily tied to licenses and have all of those inputs at
8 our disposal to fully assess damages. There is no
9 one-size-fits-all way to do damages.

10 **THE COURT:** Are you saying that from Mercedes Benz
11 you received this exact type of information in order to
12 determine what a reasonable royalty was?

13 **MR. STEWART:** Your Honor, without wanting to go into
14 so much detail, the variables that were discussed, whether it
15 was explicitly provided in this format or not because it was
16 early on in the case, there wasn't fact discovery, there wasn't
17 all of this in-depth analysis, I can't say, but I can tell you
18 that the comparable -- the way to assess --

19 **THE COURT:** No, stop. Okay. Let me hear from the
20 other side on this.

21 I really don't want to hear from every single defendant
22 here so who is going to address this?

23 **MR. LeROY:** Thank you, Your Honor. This is
24 John LeRoy. I am here representing Ford, but on this issue I
25 think we speak with one voice, and I have been invited to

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1 speak, if that's okay with you.

2 **THE COURT:** Go ahead.

3 **MR. LeROY:** Your Honor, this is not the first case in
4 which a patentee with a patent on a feature is seeking, you
5 know, revenues and financials associated with a much larger
6 product into which it's installed.

7 I think most of the counsel on this -- the patent counsel
8 on this call remember there was a day about 25 years ago where
9 you could do that in patent law. You could present the jury
10 with revenues of a big product and then do exactly what
11 Mr. Stewart described and start deducting from there. Of
12 course, only the defendant does the deducting.

13 And in 2010 with the *Uniloc* decision, which is the lead
14 decision, and also *ResQNet* -- those are the two most popular
15 decisions out of the Federal Circuit -- said that has to stop.
16 I have a quote in the slides, because you can't put the
17 \$49 million cat back in the bag. Once the top-line number
18 comes into evidence, the courts have recognized it's hard to
19 unring that bell, you know, in cases where the patent is on a
20 feature.

21 **THE COURT:** Okay, but hold on. He's not saying
22 necessarily he's going to try to put that into evidence, and
23 that would be something that would be decided later, and I
24 don't think I would necessarily let that come into evidence.

25 But here he's saying that he needs it in order to figure

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1 out what a reasonable royalty would be, and he's asserting that
2 perhaps like with respect to Mercedes Benz they gave him either
3 this information or they estimated it sufficiently so that he
4 could discuss it with them and reach a settlement in the case.

5 So why is it that you don't have to, but they did?

6 **MR. LeROY:** Thank you, Your Honor.

7 First, I don't believe, and I would invite Mr. Stewart to
8 demonstrate to you, that Mercedes Benz disclosed any
9 vehicle-level financial information. They may have disclosed
10 the number of these products that they have -- you know, number
11 of vehicles sold that have this feature because, of course,
12 that's always relevant.

13 I think that the chances of Mercedes Benz actually
14 providing the sorts of vehicle-level pricing information that
15 Mr. Stewart is looking for here from who is remaining in the
16 case is low. It may have been something in the back of
17 Mr. Stewart's mind how we can all go on line and see what
18 people sell vehicles for, I suppose, but I would challenge
19 Mr. Stewart to demonstrate to Your Honor that in fact
20 Mercedes Benz disclosed the confidential vehicle-level pricing
21 information Mr. Stewart is looking for here.

22 **THE COURT:** Well, how far are you away -- do you
23 think? -- from maybe trying to reach some kind of accommodation
24 between you on this issue? Because.

25 Here is how I see this, okay? I mean this is a

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1 complicated question. We're not going to resolve it right now
2 on this hearing.

3 And I want to thank Mr. Woloson for his detailed briefing
4 that he gave me after talking to you, and thank you all for
5 talking to him about it so that he would understand it.

6 But I can tell you that my gut reaction as it stands right
7 now is that these requests are seeking more information than I
8 think is really necessary for purposes of trying to determine
9 what would be a reasonable royalty in the case.

10 Now, I don't know what happened with respect to
11 Mercedes Benz. I will say that it gives me some optimism or
12 hope that, if they can do it, why can't you guys do it. Why
13 can't you guys get together and say all right, what would be
14 reasonable here?

15 And I know we have the Avanci information, and as I was
16 saying before, if I'm understanding that correctly, that's a
17 pool of patents that is for the same technology and that there
18 are no -- or there would be no licensing arrangements that the
19 OEMs are paying for this very same technology.

20 I'm just thinking, for goodness sake, why can't you can
21 guys work this out?

22 Because what's going to happen, the only way that this can
23 get resolved -- we're not going to do it in this hearing right
24 now. The only way it can even get resolved is if you all work
25 with one another and narrow it down maybe, a little more

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1 narrow.

2 I've got to say I don't think that getting all of the
3 sales information for all of the vehicles of every single one
4 of these companies, how much money they are making on all of
5 the vehicles that have this technology, that is insanely huge.
6 That's a giant, you know, enormous amount of information.

7 **MR. STEWART:** Can I respond to that quickly,
8 Your Honor? I'm sorry.

9 **THE COURT:** Go ahead.

10 **MR. STEWART:** I just wanted to make clear that we
11 talked about vehicle-level financials early on, and we have
12 already compromised significantly. In terms of vehicle-level
13 sales numbers like you have just referenced right there, all we
14 are asking for now is that, in addition to providing the costs
15 and resale value of the TCU, the one component that they want
16 to provide us for, they also provide the cost of the
17 infotainment system, which is basically the touch screen, the
18 interface that a user uses to access a lot of these connected
19 features. We have narrowed it down from everything about the
20 vehicle to just those two components in terms of vehicle-level
21 sales data. We want those two components and nothing else on
22 that front.

23 So I just want to make clear that we are not still over
24 here asking, hey, we want the price of your tires and how much
25 you sell the tires for. We are down to just TCU and

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1 infotainment system only, which are the things we think are
2 most closely associated with use of these patented
3 technologies.

4 **THE COURT:** You are not asking for the profit margin
5 on the entire vehicle?

6 **MR. STEWART:** No, we have compromised on that and
7 said, look, if we end up needing that in the damages report for
8 some sort of balancing or check purpose, we'll try to find that
9 publicly, but we're not asking for that now.

10 **THE COURT:** But you haven't made any kind of
11 compromise regarding all of this monetization that you are
12 talking about trying to get, how much money they make from just
13 monitoring driver usage patterns and things like that; right?

14 **MR. STEWART:** That is right, Your Honor, because we
15 think that is just -- it's closely related to the cellular
16 connections.

17 Part of the infringement that we have alleged is that they
18 infringe and induce their customers to infringe when they
19 collect that data over a cellular connection. So they are
20 using the patents every time they go and grab a piece of data
21 from that car over a cellular connection.

22 And we're not asking for every piece of data you track
23 across any type of connection. Just the cellular connections.

24 And so we think that is unlike tires or chassis or wheel
25 wells or whatever. We think that is closely enough tied to the

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1 cellular-connected technologies at issue here that we should
2 get the universe of that information, how they are using this
3 to make money.

4 **MR. LeROY:** Your Honor, I haven't had an opportunity
5 to respond here. You had asked Mr. Stewart at the beginning of
6 this call was he seeking vehicle profits, and he told you yes,
7 and so, of course, I stated the defendants' position on that.
8 If he's no longer seeking vehicle profit, that's tremendous
9 progress. I'm happy it's on the record.

10 If we now turn to -- there's been some acronyms, TCU and
11 infotainment. Those are important words because, if you recall
12 from the tutorial, Your Honor, the TCU is the box. You can
13 think of it as the black box that has the modem inside of it,
14 and the infotainment is just a completely different box, and
15 I'll come back to that in a moment, but what I want to make
16 clear because Your Honor said compromise, I want to make sure
17 that you are aware of the level of compromise that the
18 defendants have offered in this case.

19 Beyond the microchip inside of which these patents exist,
20 for which defendants have made available the value of that
21 microchip, defendants have made available to Neo the price they
22 purchased the black box, the TCU, for, which is 360 parts
23 beyond what are at issue in this case. The defendants have
24 agreed to turn over, if they have a price for which they sell
25 that black box, they have turned that over.

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1 So now we have got the modem chip, we have provided those
2 financials. We have got the box, we have provided those
3 financials. On top of that, we have what Neo calls connected
4 services, also things their patents have nothing to do with.
5 Remember, their patents are exclusively inside of
6 one microchip.

7 **THE COURT:** But they need the use of the patent to be
8 able to gather that information.

9 **MR. LeROY:** And I understand that, and, Your Honor,
10 there was a time when off the record we had a big debate about
11 how far could Neo really go, how far would we anticipate
12 Your Honor would order us to disclose information, and instead
13 of bothering you, Your Honor, we decided to turn over what Neo
14 describes as the use of that circuit and we have agreed to turn
15 over our what they call connected services, right?

16 So the data swirling around that is exchanged into and out
17 of that box, we are not fighting about that. Most of us have
18 already turned it over.

19 The issue for the moment is this other box called -- which
20 Mr. Stewart calls infotainment. Your Honor will recognize that
21 when you get into your vehicle and you want to plug in a
22 bluetooth or a -- you know, connect a bluetooth device or plug
23 in a USB device or touch the screen, in most of these vehicles
24 that's supported and enabled by some box that's not in this
25 case.

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1 It's called -- well, there are a bunch of different names
2 for it, but it's a different box. It's not this TCU. It's
3 separately sold. It's separately designed. It has nothing to
4 do with any of the patents in this case.

5 **THE COURT:** Right. In my case I call it the thing
6 that doesn't really work when I want it to. Go ahead.

7 **MR. LeROY:** We were all afraid you might say that,
8 Your Honor. But that is a different -- it's a different
9 animal, and in our view, as in many cases, we view this
10 expansion or creeping of scope. Now we're getting into a
11 different thing altogether, different engineers, different
12 purchasing, different suppliers. Everything about it is
13 different, and none of it is patented.

14 So that's where we have drawn the line, Your Honor. If
15 Mr. Stewart is no longer looking for vehicle profits, great.
16 We are not holding back on financials just at the chip level.
17 I think we are at that middle ground with the exception of this
18 infotainment box.

19 **THE COURT:** Well, how hard is it to provide some of
20 this infotainment box stuff? It sounds like it's interrelated
21 with the TCU to some degree because how else do they connect to
22 the infotainment without the cellular connection?

23 **MR. LeROY:** I don't have a drawing on that,
24 Your Honor, but they do not connect to each other at all.
25 They -- one is, like you said, is the box that doesn't work,

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1 and the other is for making cellular phone calls. They are in
2 different locations in the vehicle.

3 They don't talk to each other any more than any other
4 vehicles in the -- I'm sorry. Those two boxes don't
5 communicate with each other any more than any other two boxes
6 on the vehicle over the vehicle network.

7 **THE COURT:** So you're saying that the infotainment
8 box does not use 4G or 5G cellular technology?

9 **MR. LeROY:** I -- well, it doesn't use it any more
10 than the rest of the vehicle, I guess I would say. Like, for
11 example, the TCU, the cellular box, collects codes like how
12 many miles you have driven or do you have a tire that's low.

13 That box collects information from all over the vehicle,
14 and then it sends off to headquarters, and somehow you get a
15 text message or something. So does it -- it uses it as much as
16 the rest of the vehicle, but to somehow turn over all of the
17 financials, where would we stop and why would we -- let me back
18 up.

19 We are disclosing to Neo the fact that we have that usage,
20 and if we make money on it, we are turning over the contracts,
21 the revenue streams. You know, Neo is getting -- I find it
22 interesting they want to go further. They are getting access
23 to, as best I can tell, all revenue-generating streams that
24 exist that use that TCU box.

25 The module itself is just another box in the vehicle.

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1 It's no more relevant than the battery or the steering wheel
2 or -- I'm not sure why they want it, frankly.

3 **THE COURT:** You're not sure why they want the
4 infotainment?

5 **MR. LeROY:** Correct.

6 I should note, just so we have a clear record, at least
7 one of the defendants, some of their products have the cellular
8 modem in the infotainment module. Of course, that would be
9 turned over because in that one instance it is effectively a
10 TCU.

11 I just want to have a clear record on that. There is no
12 fight over that.

13 **THE COURT:** So, Mr. Stewart, how is the -- how is the
14 cellular technology, the 4 or 5G cellular technology, being
15 used with respect to the infotainment box?

16 **MR. STEWART:** Your Honor, I'm relying a little bit on
17 public information, to some extent. I don't know that I have a
18 full technical insight into that, but some of what Mr. LeRoy
19 said informs our choice to limit it to that particular piece.

20 As he mentioned, our understanding of the way that TCU
21 works is it gathers data from all over the car, like he said.
22 There are sensors that are impacted that also get transmitted
23 over LG, the infotainment system and other components that feed
24 the TCU with data that is transmitted.

25 The reason we picked the infotainment system as a

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1 compromise was because we do know that, at least in some
2 instances, an infotainment system is sold with the TCU already
3 embedded. So the assumption there is that is sort of a package
4 that is frequently sold together and, therefore, closely
5 associated, and just from my own personal experience in a car,
6 I know that a lot of the things you access the internet for,
7 Spotify or Google or to do remote start or whatever, you use
8 that infotainment system, that interface.

9 **THE COURT:** But he's telling you that they are going
10 to give you that.

11 **MR. STEWART:** I think he's saying --

12 **THE COURT:** If they are together, he says they are
13 going to give you that. What if they are not connected?

14 **MR. STEWART:** If they are not connected, that doesn't
15 mean that they are not sort of logically connected and still
16 closely related in terms of the way the customers use the
17 cellular connection.

18 The ones that are connected, obviously I'm happy to
19 receive that, but that's sort of incidental, right? The fact
20 that these two closely related parts are sometimes sold
21 together doesn't make them unrelated to each other when they
22 happen to be sold separately.

23 **THE COURT:** Well, what if we kind of do this, and I
24 don't know if this helps or not, but if it would be possible
25 for those companies that have infotainment systems that they

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1 say are separate from the TCU, if they could possibly provide
2 information that would explain from a technological point of
3 view why they are taking the position that these infotainment
4 centers are not utilizing the patented technology.

5 Then that would be a start, and if they can't actually --
6 they can't explain that well, well then maybe they are using
7 it.

8 But I mean somehow or another, it seems to me, if they
9 are -- if the cellular technology is somehow being used by
10 these infotainment centers, then it does seem like they would
11 be subject to disclosure as directly utilizing the technology
12 and would fall within an area that it seems like that
13 plaintiffs could reasonably get.

14 And it sounds like you are already together somewhat on
15 the monetization as it relates to the TCU, but not necessarily
16 to however information from the infotainment center is
17 monetized. Is that right?

18 **MR. LeROY:** Your Honor, we're certainly always happy
19 to confer with Neo. I just wanted to circle back to a couple
20 of points.

21 Number one is they are seeking financials. Nobody is
22 withholding how things work or what's connected to what. If
23 they have got a question and it's relevant to the TCU, I don't
24 think anybody is -- I don't even think that's what we're
25 fighting over. They want to run the numbers up.

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1 **THE COURT:** If you think that he doesn't understand
2 or he's saying that he's not sure if infotainment systems use
3 this or not --

4 **MR. LeROY:** Well, when you say "use," lots of vehicle
5 components use the circuit in a pure sense. Just like the
6 battery. A lot of -- you know, all electrical components would
7 use the battery. But their patents are inside of a -- their
8 patents make no mention -- they don't even mention a vehicle,
9 let alone the use of this data.

10 So we are now beyond the microchip, beyond the module in
11 which it's installed. We're over in some other module that it
12 doesn't connect to. Of course, some defendants, it's a
13 different story. Those are not at issue here.

14 I just want to make note that we can share that
15 information, but the issue will be the same, that their patents
16 don't extend to this other box, and this box doesn't use it any
17 more than any other component of the vehicle.

18 So I don't know where we would stop. He says only those
19 two, but -- and, well, for Ford I know there are many versions
20 over many vehicles throughout the country. When you say just
21 turn over those financials, it's an understatement to say it's
22 a large project.

23 **THE COURT:** I didn't say just turn over financials.
24 I didn't say that.

25 **MR. LeROY:** Okay.

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1 **MR. STEWART:** I said that you needed to maybe share
2 how the infotainment system works to see whether or not it was
3 using the cellular technology for 5G or 4G that they are saying
4 they --

5 **MR. LeROY:** Sure.

6 **THE COURT:** -- may be using.

7 So, anyway, I would encourage you to do that. Talk to
8 each other about that. See if you can come to an agreement
9 with respect to is the infotainment system using 5G technology
10 or not. If it is, then I think that the information relating
11 to that would seem to be comparable then to the information
12 regarding the TCU that you have already resolved.

13 I don't think getting information regarding the entire
14 vehicle price is relevant at this point, and I'm glad at this
15 point Mr. Stewart is saying he doesn't necessarily seek that.

16 So I don't know if that helps you at all to give you a
17 little bit of guidance, but what I was saying before was that
18 the only alternatives we have here is either you all work
19 together on this and work it out and move forward, you know, as
20 well as you can, or you end up briefing it.

21 And then we're in a situation where everything is going to
22 take longer because you all have to file your briefs, and it's
23 going to be fairly complicated, and then either I or a
24 magistrate judge will have to rule on that, and there's at
25 least a possibility that it might not go so well.

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1 In other words, I don't know, Mr. Stewart, it could be
2 that you get even less than what you're hoping for or what you
3 might be able to convince them to give you if a court were to
4 look at this and say, well, it was just too broad.

5 And then, on the other hand, it could be, you know,
6 Mr. Ford, that a court would look at this -- I'm sorry -- yeah,
7 Mr. LeRoy would say, you know, sorry, but you have got to give
8 over even more than you thought you had to give over.

9 And so that's the risk that you guys will be playing as
10 well as the delay involved if we litigate this. So I hope you
11 guys can try to work it out.

12 So that's -- I think that's all I want to do right now.
13 What I would say is let's have you go back to your corners and
14 go back to talking to one another, and, if necessary, we can
15 talk in about 30 days to see where you are. If you work it out
16 within 30 days, then we don't necessarily have to talk again.

17 But I think you should be able to try to work this out in
18 a reasonable fashion here because you're not really that far
19 apart with respect to the theory behind what should be
20 producible here.

21 Now, do we need to talk about this Avanci thing or what do
22 we need to talk about because I have only got about 10 minutes?

23 **MR. LeROY:** Your Honor, that's in the opposite
24 direction. That's the defendants trying to obtain some
25 information from Neo.

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1 So that is something that -- this follows on your earlier
2 point where your view is that Avanci is very relevant to this
3 case. Every defendant on this call agrees with that.

4 Avanci is the largest world's license that there is to
5 these kinds of patents, and the defendants are all parties to
6 that. So we think -- so let me back up, if I may.

7 That pool already exists, but the information we are
8 seeking here are details surrounding Neo's attempt to join that
9 pool. There was a negotiation that they have admitted took
10 place in 2022. They have admitted that figures were exchanged,
11 and they are willing to turn those over. I just want to be
12 fair to -- I might have said Avanci. I want to be fair to Neo.

13 Neo has said that they will turn over the numbers, but
14 there are two categories of information that Neo said they will
15 not provide which we think are highly relevant, and there's no
16 basis for withholding them.

17 The first category of information are Neo provided some
18 charts and some analysis to Avanci, right? They wanted to join
19 Avanci as a patent owner, and Avanci doesn't just let anybody
20 sign up. Asked them or received, in any event, some charts and
21 analysis from Neo that presumably dealt with the relevance of
22 their patents.

23 Avanci then takes those and analyzes them and then makes
24 an offer or gives feedback. We know this because we know how
25 Avanci works generally.

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1 And we can take these one at a time, but Neo has said they
2 should not have to turn over to the defendants the analysis and
3 charts that they shared with Avanci. That analysis is relevant
4 to two very important -- well, possibly three, but at least two
5 very important issues in this case:

6 Infringement. Because the whole analysis will be whether
7 Neo's patents are or are not practiced by the relevant
8 technology.

9 And damages. That was the input that led to Avanci's
10 royalty offer as a patent owner.

11 **THE COURT:** Okay. Let me hear from Mr. Stewart.

12 **MR. STEWART:** Certainly, Your Honor. The things that
13 we're withholding are just classic work product. They are
14 claim charts, infringement charts that were prepared in
15 anticipation of litigation with attorneys, and the only way
16 they were shared was under NDA, not with an adversary, not with
17 one of the defendants, but with a third party that was bound by
18 this NDA and was not more likely to provide it to an adversary.

19 Under work product law, work product protection is not
20 waived unless you disclose it or make it substantially more
21 likely that it will end up in the hands of an adversary. It's
22 different than attorney-client privilege.

23 These claim charts are our work product about how we
24 viewed the infringement of the patents-in-suit. And so even
25 though we'll tell them the negotiations and the details about

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1 the actual communications, we're just going to hold back those
2 claims charts, which are work product that has not been waived.

3 **THE COURT:** Okay. Well, the way I see this is that
4 this case is different from whatever was going on with Avanci
5 and your claims that you were making at that time, and I don't
6 think you should have to disclose what you said then.

7 You might be taking a different position now, and you are
8 entitled to do that, and so I'm not going to make you disclose
9 those. I don't think you have to disclose those. I think they
10 are work product.

11 And you do have to disclose the amount of what you were --
12 what you were being offered and what you were negotiating with
13 respect to a reasonable royalty. That's what's at issue here,
14 and I think it's very relevant, and that's what you have to
15 disclose, and so just go at it that way.

16 **MR. LeROY:** Your Honor, if I can --

17 **THE COURT:** -- say what he was claiming before. It's
18 not relevant. Who cares what he was claimed before?

19 **MR. LeROY:** Your Honor, if I may.

20 They have already stated in an interrogatory response that
21 their negotiations with Avanci were specifically about the
22 defendants. These aren't some random charts.

23 And we're not -- I want to be clear. We're not seeking
24 Neo's internal privileged materials. We're seeking what they
25 gave to Avanci about defendants that they told us they did.

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1 **THE COURT:** What do you mean "about defendants"? I
2 don't understand. Like what?

3 **MR. LeROY:** So the defendants in this case are Avanci
4 members. The value --

5 **THE COURT:** What are you saying that they said about
6 defendants?

7 **MR. LeROY:** They have already told us the stuff he's
8 withholding is about defendants. They have told us that.

9 **THE COURT:** What stuff?

10 **MR. LeROY:** Two things. The claim charts and
11 analysis, which is thing one, and thing two is some group
12 settlement offer that they claim they made that we have never
13 received.

14 This is highly relevant. Judge, this is not some one-off
15 or unrelated exchange. This is exclusive limited to who is
16 here on this phone call, and they have said that in their
17 interrogatory response and their correspondence.

18 And this happened after the complaint -- I think after the
19 complaint was filed. This is not unrelated to this case. It
20 is directly related, and that's why they don't want to turn it
21 over.

22 Your Honor, we would ask for an opportunity to brief this
23 issue. This is -- and you may rule against us, but we would
24 beg the opportunity to brief the issue.

25 **THE COURT:** All right. Well, you are limited to

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1 10 pages.

2 **MR. LeROY:** Thank you.

3 **THE COURT:** And we'll take a look at what you have to
4 say because it's not clear to me why this would be relevant to
5 your defense in this case. But, as I said, the amount is
6 relevant so ...

7 Okay. So I think that's about as far as we are going to
8 get right now. We'll reconvene and circle the wagons again in
9 about 30 days and see where you all are.

10 It does seem to me that you all have been doing a pretty
11 good job working with one another and with Mr. Woloson on the
12 case, and I do appreciate that, and I hope you keep going in
13 that direction because I want to be as efficient as possible
14 given the scope of the case and how, you know, additional
15 delays would not be in anybody's interest.

16 And so let's keep trying to go in that direction. I know
17 Mr. Woloson is willing to speak with you and set up calls if
18 you have issues and you want to speak with him in a way that
19 you think would advance the case. I think he would be willing
20 to do that, and I would authorize him to do that.

21 And so let's adjourn for now. Is there anything else
22 either of you would like to say before we adjourn?

23 **MR. STEWART:** Nothing from plaintiff. Thank you,
24 Your Honor.

25 **MR. LeROY:** I don't think there's anything for

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1 defendants, Your Honor.

2 **THE COURT:** Okay. So, Mr. LeRoy, you can get that in
3 in about two weeks, okay?

4 **MR. LeROY:** Thank you, Your Honor.

5 **THE COURT:** All right. Thank you very much.
6 Bye bye.

7 (Proceedings concluded at 4:52 p.m.)

8 - - -

9 **C E R T I F I C A T I O N**

10 I certify that the foregoing is a correct transcription of
11 the record of proceedings in the above-entitled matter.

12

13 s/ Sheri K. Ward
14 Sheri K. Ward
 Official Court Reporter

9/21/2023
Date

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